

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT E.D.N.Y.

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INTERNATIONAL AUTO MART,
A Solo Proprietorship, and MICHAEL
VILNER, its owner, d/b/a International Auto
Mart/Best Motors

BROOKLYN OFFICE

MEMORANDUM AND ORDER

Case No. 07-CV-2175 (FB) (VVP)

Plaintiffs,

-against-

ELITE MOTOR GROUP CORP., ALEX
KORCHMAR, as President of ELITE MOTOR
GROUP CORP., and ALEX KORCHMAR, aka
Aleksandr Korchmar, Individually,

Defendants.
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Appearances:

For the Plaintiff:

RAYMOND B. GRUNEWALD, ESQ.
Raymond B. Grunewald & Associates
757 Third Avenue
25th floor
New York, NY 10017

For the Defendants:

MARK S. SILBERGLITT, ESQ.
Diamond, Rutman, Costello, &
Silberglitt, Esqs.
291 Broadway, Suite 1100
New York, NY 10007



BLOCK, Senior District Judge:

On April 8, 2009, Magistrate Judge Pohorelsky issued a Report and Recommendation ("R&R") recommending that this action be dismissed without prejudice because plaintiffs have failed to appear in this action, by counsel or otherwise, after the withdrawal of their counsel due to illness. *See* R&R at 1. The magistrate judge notified plaintiffs of its attorney's withdrawal by a Memorandum and Order dated February 3, 2009 (the "Order"). *See id.* The Order provided Plaintiffs ample time and opportunity to respond but warned of the consequences of a failure to appear. *See id.* The R&R also stated

that failure to object within ten days would preclude appellate review. *See id.* at 2. At the magistrate court's direction, copies of the R&R were mailed and faxed to plaintiffs on April 29, 2009; no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error, *see Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); no such error appears here. Accordingly, the Court adopts the R&R without *de novo* review and directs the Clerk to dismiss this action in accordance with the R&R.

SO ORDERED.

 SFB 

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
August 5, 2009